

SENATE BILL 399

D3, E1, N1

(0lr0493)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Raskin, Forehand, ~~and Pugh~~ Pugh, Gladden, Jacobs, Simonaire, and Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Abatement of Nuisance – Prostitution**

3 FOR the purpose of establishing that the use of real property for prostitution is a
4 nuisance that may be the subject of a certain action for abatement; *providing*
5 *that certain relief is not available in certain actions for abatement of nuisance*
6 *that alleges the use of a property for prostitution*; defining a certain term;
7 making a stylistic change; and generally relating to prostitution and abatement
8 of nuisance actions.

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Law
11 Section 11–301(c)
12 Annotated Code of Maryland
13 (2002 Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
2 Article – Real Property
3 Section 14–120
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2009 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Criminal Law**

9 11–301.

10 (c) “Prostitution” means the performance of a sexual act, sexual contact, or
11 vaginal intercourse for hire.

12 **Article – Real Property**

13 14–120.

14 (a) (1) In this section the following words have the meanings indicated.

15 (2) “Commercial property” does not include residential rental
16 property.

17 (3) “Community association” means:

18 (i) A nonprofit association, corporation, or other organization
19 that is:

20 1. Comprised of residents of a community within which
21 a nuisance is located;

22 2. Operated exclusively for the promotion of social
23 welfare and general neighborhood improvement and enhancement; and

24 3. Exempt from taxation under § 501(c)(3) or (4) of the
25 Internal Revenue Code; or

26 (ii) A nonprofit association, corporation, or other organization
27 that is:

28 1. Comprised of residents of a contiguous community
29 that is defined by specific geographic boundaries, within which a nuisance is located;
30 and

1 2. Operated for the promotion of the welfare,
2 improvement and enhancement of that community.

3 (4) “Controlled dangerous substance” means a substance listed in
4 Schedule I or Schedule II under § 5–402 or § 5–403 of the Criminal Law Article.

5 (5) “Nuisance” means a property that is used:

6 (i) 1. By persons who assemble for the specific purpose of
7 illegally administering a controlled dangerous substance;

8 [(ii)] 2. For the illegal manufacture, or distribution of:

9 [1.] A. A controlled dangerous substance; or

10 [2.] B. Controlled paraphernalia, as defined in § 5–101
11 of the Criminal Law Article; or

12 [(iii)] 3. For the illegal storage or concealment of a controlled
13 dangerous substance in sufficient quantity to reasonably indicate under all the
14 circumstances an intent to manufacture, distribute, or dispense:

15 [1.] A. A controlled dangerous substance; or

16 [2.] B. Controlled paraphernalia, as defined in § 5–101
17 of the Criminal Law Article; OR

18 **(II) FOR PROSTITUTION.**

19 (6) (i) “Operator” means a person that exercises control over
20 property.

21 (ii) “Operator” includes a property manager or any other person
22 that is authorized to evict a tenant.

23 (7) “Owner” includes an owner–occupant.

24 (8) “Owner–occupant” includes an owner of commercial property that
25 conducts business in any part of the property.

26 (9) “Property” includes a mobile home.

27 (10) **“PROSTITUTION” HAS THE MEANING STATED IN § 11–301 OF**
28 **THE CRIMINAL LAW ARTICLE.**

1 **(11)** (i) “Tenant” means the lessee or a person occupying property,
2 whether or not a party to a lease.

3 (ii) “Tenant” includes a lessee or a person occupying a mobile
4 home, whether or not a party to a lease.

5 (iii) “Tenant” does not include:

6 1. The owner of the property; or

7 2. A mobile home owner who leases or rents a site for
8 residential use and resides in a mobile home park.

9 (b) An action under § 4–401 of the Courts Article to abate a nuisance may be
10 brought by:

11 (1) The State’s Attorney of the county in which the nuisance is located;

12 (2) The county attorney or solicitor of the county in which the nuisance
13 is located;

14 (3) A community association within whose boundaries the nuisance is
15 located; or

16 (4) A municipal corporation within whose boundaries the nuisance is
17 located.

18 (c) An action under § 4–401 of the Courts Article to abate a nuisance may be
19 brought against:

20 (1) A tenant of the property where the nuisance is located;

21 (2) An owner of the property where the nuisance is located; or

22 (3) An operator of the property where the nuisance is located.

23 (d) (1) (i) Except as provided in subparagraph (ii) of this paragraph,
24 an action may not be brought under this section concerning a commercial property
25 until 30 days after the tenant, if any, and owner of record receive notice from a person
26 entitled to bring an action under this section that a nuisance exists.

27 (ii) In Baltimore City, an action may not be brought under this
28 section concerning a commercial property until 15 days after the tenant, if any, and
29 owner of record receive notice from a person entitled to bring an action under this
30 section that a nuisance exists.

31 (2) The notice shall specify:

1 (i) The date and time of day the nuisance was first discovered;
 2 and

3 (ii) The location on the property where the nuisance is allegedly
 4 occurring.

5 (3) The notice shall be:

6 (i) Hand delivered to the tenant, if any, and the owner of
 7 record; or

8 (ii) Sent by certified mail to the tenant, if any, and the owner of
 9 record.

10 (e) (1) In addition to any service of process required by the Maryland
 11 Rules, the plaintiff shall cause to be posted in a conspicuous place on the property no
 12 later than 48 hours before the hearing the notice required under paragraph (2) of this
 13 subsection.

14 (2) The notice shall indicate:

15 (i) The nature of the proceedings;

16 (ii) The time and place of the hearing; and

17 (iii) The name and telephone number of the person to contact for
 18 additional information.

19 (f) A plaintiff is entitled to relief under this section whether or not an
 20 adequate remedy exists at law.

21 (g) (1) If, after a hearing, the court determines that a nuisance exists, the
 22 court may order any appropriate injunctive or other equitable relief.

23 (2) Notwithstanding any other provision of law, and in addition to or
 24 as a component of any remedy ordered under paragraph (1) of this subsection, the
 25 court may order:

26 (i) A tenant who knew or should have known of the existence of
 27 the nuisance to vacate the property within 72 hours; or

28 (ii) An owner or operator of the property to submit for court
 29 approval a plan of correction to ensure, to the extent reasonably possible, that the
 30 property will not again be used for a nuisance if:

31 1. The owner or operator is a party to the action; and

1 2. The owner or operator knew or should have known of
2 the existence of the nuisance.

3 (h) (1) (i) If a tenant fails to comply with an order under subsection (g)
4 of this section and the owner or operator, and tenant, are parties to the action, the
5 court, after a hearing, may order restitution of the possession of the property to the
6 owner or operator.

7 (ii) If the court orders restitution of the possession of the
8 property under subparagraph (i) of this paragraph, the court shall immediately issue
9 its warrant to the sheriff or constable commanding execution of the warrant within 5
10 days after issuance of the warrant.

11 (2) **(I) THIS PARAGRAPH DOES NOT APPLY TO AN ACTION**
12 **BROUGHT UNDER THIS SECTION ALLEGING THE USE OF A PROPERTY FOR**
13 **PROSTITUTION.**

14 **(II)** If an owner, including an owner-occupant, fails to comply
15 with an order under subsection (g) of this section, after a hearing the court may, in
16 addition to issuing a contempt order or an order for any other relief, order that:

17 ~~(i)~~ **1.** The property be sold, at the owner's expense, in
18 accordance with the Maryland Rules governing judicial sales; or

19 ~~(ii)~~ **2.** The property be demolished if the property is unfit for
20 habitation and the estimated cost of rehabilitation significantly exceeds the estimated
21 market value of the property after rehabilitation.

22 **(3) (I) THIS PARAGRAPH APPLIES ONLY TO AN ACTION**
23 **BROUGHT UNDER THIS SECTION ALLEGING THE USE OF A PROPERTY FOR**
24 **PROSTITUTION.**

25 **(II) IF AN OWNER, INCLUDING AN OWNER-OCCUPANT, FAILS**
26 **TO COMPLY WITH AN ORDER UNDER SUBSECTION (G) OF THIS SECTION, AFTER A**
27 **HEARING, THE COURT MAY ISSUE A CONTEMPT ORDER.**

28 ~~(3)~~ **(4)** If an owner-occupant fails to comply with an order under
29 subsection (g) of this section regarding a nuisance in the owner-occupied unit of the
30 property, after a hearing the court may, in addition to issuing a contempt order or an
31 order for any other relief, order that:

32 (i) The owner-occupied unit be vacated within 72 hours; and

33 (ii) The owner-occupied unit remain unoccupied for a period not
34 to exceed 1 year or until the property is sold in an arm's length transaction.

1 (i) Except as provided in [paragraph] SUBSECTION (g)(2) of this section, the
2 court may order appropriate relief under subsection (g) of this section without proof
3 that a defendant knew of the existence of the nuisance.

4 (j) In any action brought under this section:

5 (1) Evidence of the general reputation of the property is admissible to
6 corroborate testimony based on personal knowledge or observation, or evidence seized
7 during the execution of a search and seizure warrant, but shall not, in and of itself, be
8 sufficient to establish the existence of a nuisance under this section; and

9 (2) Evidence that the nuisance had been discontinued at the time of
10 the filing of the complaint or at the time of the hearing does not bar the imposition of
11 appropriate relief by the court under subsection (g) of this section.

12 (k) **(1) THIS SUBSECTION DOES NOT APPLY TO AN ACTION AGAINST**
13 **AN OWNER, OTHER THAN AN OWNER-OCCUPANT, BROUGHT UNDER THIS**
14 **SECTION ALLEGING THE USE OF A PROPERTY FOR PROSTITUTION.**

15 (2) The court may award court costs and reasonable attorney's fees to
16 a community association that is the prevailing plaintiff in an action brought under
17 this section.

18 (l) An action under this section shall be heard within 14 days after service of
19 process on the parties.

20 (m) This section does not abrogate any equitable or legal right or remedy
21 under existing law to abate a nuisance.

22 (n) (1) An appeal from a judgment or order under this section shall be
23 filed within 10 days after the date of the order or judgment.

24 (2) If either party files a request for oral argument, the court shall
25 hear the oral argument within 7 days after the request is filed.

26 (3) (i) If the appellant files a request for oral argument, the
27 request shall be filed at the time of the filing of the appeal.

28 (ii) If the appellee files a request for oral argument, the request
29 shall be filed within 2 days of receiving notice of the appeal.

30 (o) Provisions of this article or public local laws applicable to actions between
31 a landlord and tenant are not applicable to actions brought against a landlord or a
32 tenant under this section.

1 (p) All proceedings under this section are equitable in nature.

2 (q) (1) Except as provided in paragraph (2) of this subsection, when
3 necessary to accomplish the purposes of this section, a law enforcement officer, an
4 attorney in a municipal or county attorney’s office, or an attorney in an office of the
5 State’s Attorney may disclose the contents of an executed search warrant and papers
6 filed in connection with the search warrant to:

7 (i) An officer or director of the community association in which
8 the nuisance is located, or the attorney representing the community association;

9 (ii) An owner, tenant, or operator of the searched property or an
10 agent of the owner, tenant, or operator of the searched property; or

11 (iii) An attorney in a municipal or county attorney’s office.

12 (2) An affidavit may not be disclosed under this subsection while
13 under seal in accordance with § 1–203 of the Criminal Procedure Article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.